

Yoonus vs Shihab N.

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Court : Kerala

Decided On : Jan-31-2024

Judge : Honourable Mr.Justice Ziyad Rahman a.a.

Appeal No. : MACA/2622/2012

Appellant : Yoonus

Respondent : Shihab N.

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.
WEDNESDAY, THE 31ST DAY OF JANUARY 2024 / 11TH MAGHA,
1945 MACA NO. 2622 OF 2012 [AGAINST THE AWARD DATED
30.11.2011 IN OP(MV)NO.182 OF 2009 ON THE FILE OF THE MOTOR
ACCIDENTS CLAIMS TRIBUNAL, TIRUR] APPELLANT/PETITIONER:
YOONUS S/O.YOOSAF, NECHIKKAT CHIRAYIL HOUSE,
OMACHAPUZHA P.O., TIRUR TALUK, MALAPPURAM DISTRICT. BY
ADVS. SMT.BHAVANA J. MENON RESPONDENTS/RESPONDENTS:

1 SHIHAB N. S/O.MOIDEEN HAJI, NANDANIL HOUSE,
P.O.TANALUR,TIRUR TALUK, MALAPPURAM DISTRICT, PIN - 676

307. 2 ASHARAF N. SO.KUNHI MOHAMMED NANDANIL HOUSE
P.O.TANALUR, TIRUR TALUK, MALAPPURAM DISTRICT, PIN - 676
307. 3 BAJAJ ALIANZE GENERAL INSURANCE CO.LTD. 3RD FLOOR
FINANCE TOWER, NEAR INDIAN EXPRESS, KALOOR, COCHIN PIN -
682017. 4 NAJEEB, S/O.ALAVI PAINATTU KOTTASSERY HOUSE
NANNAMBRA AMSOM THEYYALA DESOM, P.O.THEYYALA, TIRUR
TALUK, MALAPPURAM DISTRICT, PIN - 676 320. BY ADVS. R1, R2
AND R4 BY SRI.T.B.HOOD R3 BY SEBASTIAN
VARGHESE(K/141/2000)

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR
ADMISSION ON 31.01.2024, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING: :2 :

JUDGMENT

The appellant was the petitioner in O.P.(M.V) No. 182/2009 on

the files of the Motor Accidents Claims Tribunal, Tirur. The said claim petition was submitted by him seeking compensation for the injuries sustained to him in a motor accident that occurred on 11.09.2008. According to the appellant the accident occurred when he was travelling in a bus bearing registration No.KL-10J/9297 from Churangara to Tirur and when the bus reached at Tharayil, the 1 st respondent who was driving the vehicle, applied a sudden break and the left rear side of the bus hit against an electric post situated on the left side of the road. Due to the impact the left wind glass of the bus was broken and the left hand of the appellant hit against the electric post and sustained serious injuries. It was contended that the accident occurred due to the negligent driving of the bus by the 1st respondent. The claim petition was submitted in such circumstances.

2. The 1st and the 2nd respondents filed a joint written

statement, disputing the manner in which the accident claimed to have been occurred in the claim petition. According to them, the 1 st respondent was driving the vehicle with at utmost care and caution. It was also contended that the 1 st

respondent was having an :3 : effective driving licence and badge and the vehicle was insured with the 3rd respondent.

3. The 3rd respondent filed a written statement admitting the

coverage of policy for the said vehicle. However, they denied that the appellant sustained injuries in the accident. According to them there is no evidence to suggest that the vehicle involved hit against the electric post as alleged. It was further contended that, the claim petition was filed by the appellant in collusion with the respondents 1

and 2. The delay of 8 days in registering the FIR was also highlighted.

4. The 4th respondent initially filed a written statement denying the accident and contended that, the appellant was not a passenger in the said vehicle. However, later, the said written statement was amended by admitting that he was a passenger in the said vehicle.

5. The evidence in this case consists of Exts.A1 to A14

from the side of the appellant. From the side of the respondents RWs 1 to 4 were examined and Exts.B1 to B3 were marked. After the trial, the Tribunal came to the finding that, the appellant could not prove the involvement of the bus in the accident and accordingly the claim petition was dismissed. This appeal was submitted by the appellant challenging the said finding.

:4 :

6. Heard Smt. Bhavana J Menon, the learned counsel

appearing for the appellant, Sri. T.B. Hood, the learned counsel appearing for respondents 1, 2 and 4 and Sri. Sebastian Varghese, the learned counsel appearing for the 3 rd respondent insurance company.

7. The crucial question that arises for consideration is

whether the finding of the tribunal, to the effect that the appellant failed to prove the involvement of the bus in the accident is correct or not. The first thing to be noticed in this regard is that there was a delay of 8 days in registering the FIR. Besides the same, the appellant did not care to mount the box explaining the circumstances under which the accident occurred, despite the fact that there was serious contest from the part of the 3rd respondent and other respondents with regard to the manner in which the accident occurred. Ext.A1 is the FIR which was registered on the

basis of statement given by the appellant himself. The specific statement of the appellant is to the effect that, while he was travelling as a passenger in the bus, due to the rash and negligent driving of the bus, it hit against an electric post and the window glass of the bus was broken and the hand of the appellant hit on the

telephone post thereby causing injuries. It is also specifically mentioned in Ext.A1 F.I.Statement that, at the time of the accident, :5 :

the bus was being driven by one Najeeb, who is personally known to him. The said Najeeb is none other than the 4th respondent in this claim petition. The Police conducted an investigation and submitted final report as Ext.A6 in tune with the allegations contained in Ext.A1 F.I.S. implicating the supplementary 4th respondent herein, Najeeb as the accused. However, when the claim petition was submitted, the specific case advanced by the appellant is to the effect that at the relevant time the vehicle was being driven by the 1st respondent and the accident occurred when the bus hit against the electric post.

8. Thus, it can be seen that, two inconsistent versions as to

the person who drove the vehicle at the time of the accident is forthcoming from the appellant himself, that is, one as per his statement in the F.I.S. and the another one as per the pleadings in the claim petition submitted by him . It is also to be noted that despite such crucial discrepancy as to the person who drove the vehicle at the time of the accident, the appellant did not care to mount the box for explaining the reason for such inconsistent version. The same is very conspicuous in the peculiar facts and circumstances of the case.

9. The other evidence available on record are that of RW1 and RW2. RW1 claimed to be the driver of the bus and RW2 was the Conductor. Both of them have asserted that, at the time of the :6 : accident RW1 was driving the bus and not the supplementary 4 th respondent. According to them, the supplementary 4 th respondent

was the cleaner in the bus. As per the version, the accident occurred in a different manner than claimed in the claim petition. Both of them have asserted that, the bus did not hit the electric post, but only the hand of the appellant hit on the telephone post. This is contrary to the specific statement given by the appellant in this regard before the Police as well as in the claim petition submitted by him. Thus it is evident that, there are complete inconsistencies as to the person who drove the vehicle and the manner in which the accident occurred.

10. Another important aspect to be noticed is that, even

though in the FIS, the appellant specifically mentioned that, the window glass of the bus was broken, in the vehicle inspection report of the AMVI, which was conducted after the registration of FIR. No such damages were found. Exhibit A9 is the discharge card of the appellant wherein an entry with regard to the history of the accident was originally recorded as, fall from bike. However, the said entry was subsequently scored off and corrected as RTA. Exts.A7 and A8

are the wound certificates issued from Al-Noor Hospital, Thalakadathur and Al-Shifa Hospital, Perinthalmanna, where the appellant was taken for treatment, and the cause of accident :7 :

referred to in both the said certificates was just RTA. The delay of 8 days in registering the FIR is also yet another aspect which creates suspicion as to the circumstances under which the claim petition was submitted. It is also to be noted in this regard that, the delay of 8 days in registering the FIR gains importance when considering the fact that despite the fact that, the appellant was taken to two hospitals and in the wound certificates, the cause of injury was mentioned as RTA, the matter was never reported to the police until the appellant himself went to the police station and reported the matter. Thus when all these aspects are taken into

consideration, the case set up by the appellant is full of consistencies with regard to the person who drove the vehicle, the manner in which the accident occurred, the damages sustained to

the bus etc. The fact that the appellant did not mount the box despite all these inconsistencies to explain the same is also yet another aspect which makes the case of the 3rd respondent more

probable. Moreover, the appellant himself does not have a consistent case with regard to the person who drove the vehicle, as before the Police he specifically named the supplementary 4th respondent as the person who drove the vehicle, whereas he named the 1st respondent as the driver of the vehicle in the claim petition. Even though the 1st respondent while being examined as

:8 : RW1 claimed that he was driving the vehicle at the time of the accident, the manner in which the accident occurred according to him was completely different from the version that was stated by the

appellant in the claim petition. In such circumstances, the case advanced by the appellant is full of inconsistencies and the same remained unexplained by the appellant as he did not mount the box. Thus when all the aforesaid aspects are taken into consideration, the only irresistible conclusion possible is that, the finding entered by the tribunal to the effect that the appellant could not prove the involvement of the bus in the accident cannot be found fault with.

Therefore, I do not find any scope for interference and accordingly, this appeal is dismissed confirming the award passed by the tribunal. Sd/- ZIYAD RAHMAN A.A.
JUDGE ncd/rpk

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